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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CHARLES MCKNIGHT, individually and on
behalf of all others similarly situated,

Plaintiff,

v.

TECHNOLOGY SOLUTIONS, INC. and
DONIS SOLUTIONS, INC.,

Defendants.

Case No.

COLLECTIVE AND CLASS ACTION
COMPLAINT AND JURY DEMAND

1. Fair Labor Standards Act
2. Work Expenditure Reimbursement
3. Unfair Competition
4. Wage Statement Penalty
5. Wage Violation
6. Meal and Rest Break Violation

1 **I. INTRODUCTION**

2 1. Plaintiff Charles McKnight (“Plaintiff”) brings this case as a collective action under
3 the Federal Fair Labor Standards Act, 29 U.S.C. §§ 201, *et seq.* (“FLSA”) and a class action under
4 Rule 23 of the Federal Rules of Civil Procedure. As set forth below, Plaintiff worked as a cable TV
5 installation and repair technician for the joint employer Defendants Technology Solutions, Inc.
6 (“TSI”) and Donis Solutions, Inc. (“Donis”) (together, “Defendants”), out of Defendants’ California
7 garages in Riverside and San Luis Obispo. Although the work he performed for Defendants was
8 that of an employee both under the FLSA and the Labor Code, he was improperly misclassified as
9 an independent contractor (as were many other individuals similarly situated) and as a result, was
10 unlawfully deprived of overtime, had unlawful deductions taken from his pay, was not given proper
11 wage statements, meals, or rest breaks, and was forced to bear the expenses of his work in violation
12 of the Labor Code sections 2802, 226, 512, and 226.7.

13 **II. JURISDICTION AND VENUE**

14 2. The jurisdiction of this Court is invoked pursuant to 29 U.S.C. §1331 in that this
15 claim arises under the FLSA, and this Court has supplemental jurisdiction over the related state
16 law claims. In addition, this court has jurisdiction over this matter under the Class Action
17 Fairness Act in that the parties are citizens of different states, there are over a hundred class
18 members in the class, and without the benefit of discovery, the amount in controversy exceeds \$5
19 million.
20

21 3. Venue is properly in the Central District of California, Eastern Division
22 (Riverside) in that Defendants maintain a facility in Riverside, California and Riverside,
23 California is the garage out of which Plaintiff worked, and is the location of many other
24 technicians who would be members of the Classes (as defined below).

1 **III. PARTIES**

2 4. Plaintiff Charles McKnight is an adult resident of Murrieta, California (Riverside
3 County).

4 5. Defendant Technology Solutions, Inc. (“TSI”) is a telecommunications company
5 with a headquarters in the state of Illinois and which maintains work locations and offices in
6 several communities in the state of California including Riverside, California.

7 6. Defendant Donis Solutions, Inc. (“Donis”) is a corporation with a headquarters in
8 Illinois and which purports to utilize cable installation technicians in Riverside, California and
9 other locations, along with TSI.

10 **IV. CLASS DEFINITIONS**

11 7. Plaintiff brings this action as a collective action under § 216(b) of the FLSA, and
12 as a class action under FED. R. CIV. P. 23.

13 8. The collective action under the FLSA is on behalf of the following group:

14
15 All individuals who worked as cable installation technicians for TSI and
16 Donis, performing cable installation, repair, and related services in the
17 United States within the last three years, and who were treated as
independent contractors by TSI and/or Donis (“FLSA Class”).

18 9. The Rule 23 class action is on behalf of the following group:

19 All individuals who worked as cable installation technicians for TSI and
20 Donis, performing cable installation, repair, and related services in the
21 state of California within the last four¹ years, and who were treated as
independent contractors by TSI and/or Donis (“California Class”).

22 10. The FLSA Class and California Class are together referred to as the “Classes.”

23 11. Plaintiff reserves the right to redefine the Classes prior to notice or class
24 certification, and thereafter, as necessary.

25
26
27 ¹ The statute of limitations on Plaintiff’s California Unfair Competition Law claim is four (4)
28 years.

1 **V. STATEMENT OF FACTS**

2 12. In or about June of 2014, Plaintiff Charles McKnight applied for and was hired by
3 Defendant TSI to perform cable installation, repair, and related services for Defendant TSI at its
4 San Luis Obispo location. Specifically, Plaintiff was hired to primarily perform cable TV and
5 related services for one of TSI's large customers, Charter Communications, a large cable TV
6 company which provides services to residential and business customers throughout the United
7 States. After Plaintiff was hired by TSI, he was later informed that his pay would come from
8 another company called Donis Solutions, Inc. and that Donis would be responsible for his actual
9 paychecks. Plaintiff also received a multi-page document from Donis setting forth the terms of
10 his work. Plaintiff was told that he would be classified as an independent contractor not as an
11 employee.

12 13. TSI and Donis are joint employers. Upon information and belief, TSI and Donis
13 have an arrangement whereby they jointly oversee the work of Plaintiff and the Classes and
14 provide their compensation.

15 14. At all times relevant to this Complaint, both TSI and Donis exerted significant
16 control over Plaintiff and members of the Classes.

17 15. TSI and Donis have the authority to determine the rates and methods of pay for
18 Plaintiff and the Classes.

19 16. Plaintiff and the Classes are economically dependent on both TSI and Donis.
20 Donis issues Plaintiff and the Classes their pay stubs, and TSI directs and supervises the day to
21 day work activities of Plaintiff and the Classes.

22 17. Plaintiff and the Classes provide manual labor for TSI and Donis, and they are
23 entirely dependent on TSI and Donis to provide them with compensation for that work.

24 18. The work of Plaintiff and the Classes benefits both TSI and Donis, as both
25 companies receive a profit from the labor provided by Plaintiff and the Classes.
26

1 c. TSI tracked Plaintiff's whereabouts each day using a cell phone GPS application;
2 and

3 d. TSI maintained strict standards that if Plaintiff did not follow, such as less than
4 2% call-back rate, at least 90% quality control rating, money would be deducted
5 from his pay, including chargebacks of approximately \$60 for each purported
6 infraction.

7 28. Given the workload, Plaintiff and the other technicians were only able to work for
8 TSI during the duration of their employment.

9 29. Plaintiff and other so-called independent technicians there worked significant
10 amounts of overtime. Plaintiff typically worked 12 hours per day, 6 days per week. On
11 occasion, Plaintiff was also required to work a seventh day during the week. Plaintiff observed
12 other Class Members working similar schedules.

13 30. Plaintiff recalls working 70 or more hours per week during many of the weeks
14 that he worked between June 2014 and March 2015. Plaintiff was not provided with any
15 overtime compensation for the hours that he worked in excess of 40 each week.

16 31. Plaintiff and all other so-called independent contractor technicians were paid on a
17 piece rate basis. They received a specific amount for an installation and for trouble calls. None of
18 the independent contractor technicians received any overtime compensation, and it was the
19 company's uniform policy not to pay such contractor technicians overtime.

20 32. In addition, Plaintiff was not reimbursed for any of his expenses including gas,
21 mileage, maintenance, and the cost of tools.

22 33. As large corporations that provide services across the United States, there is no
23 question that Defendants have access to human resource expertise and legal counsel who can
24 advise them on their FLSA and state law compliance obligations.

25 34. TSI has specific knowledge of its obligations to properly pay its employees.
26 Indeed, TSI was recently named in a class action lawsuit brought on behalf of individuals who
27

were classified as employees by TSI (“Non-Exempt Employees”). *See Morales v. Technology Solutions, Inc.*, No. 30-2015-00825385-CU-OE-CXC (Cal. Sup. Ct. 2015). The *Morales* action alleges that TSI failed to properly compensate the Non-Exempt Employees, in violation of California Labor Laws.

35. Defendants have acted willfully and/or with reckless disregard of the applicable FLSA and California regulations, by failing to properly compensate Plaintiff and the Classes for hours worked in excess of forty (40) during the workweek.

36. Defendants failed to properly track, monitor or record the actual number of hours per day that Plaintiff and Class members worked, as required by the FLSA and California state law. *See* 29 C.F.R. § 516.2(a)(7) and Cal. Labor Code § 226 (requiring employers to maintain and provide accurate wage statements).

37. IWC Wage Order 4 applies to Plaintiff and the Class members.

VI. COLLECTIVE ACTION ALLEGATIONS

38. Plaintiff brings this lawsuit pursuant to 29 U.S.C. § 216(b) as a collective action on behalf of the FLSA Class as defined above.

39. Plaintiff desires to pursue his FLSA claims on behalf of any individuals who opt-in to this action pursuant to 29 U.S.C. § 216(b).

40. Plaintiff and the FLSA Class are “similarly situated” as that term is used in 29 U.S.C. § 216(b) because, *inter alia*, all such individuals currently work or worked pursuant to Defendants’ previously described common business and compensation practices as described herein, and, as a result of such practices, have been misclassified as independent contractors and have not been paid the full and legally mandated overtime premium for hours worked over forty (40) during the workweek. Resolution of this action requires inquiry into common facts, including, *inter alia*, Defendants’ common misclassification, compensation and payroll practices.

41. Specifically, Defendants misclassified Plaintiff and the FLSA Class as independent contractors and paid them a set hourly rate.

1 42. The similarly situated employees are known to Defendants, are readily
2 identifiable, and can easily be located through Defendants' business and human resources
3 records.

4 43. Defendants employ many FLSA Class Members throughout the United States.
5 These similarly situated employees may be readily notified of this action through U.S. mail
6 and/or other means, and allowed to opt-in to this action pursuant to 29 U.S.C. § 216(b), for the
7 purpose of collectively adjudicating their claims for overtime compensation, liquidated damages
8 (or, alternatively, interest), and attorneys' fees and costs under the FLSA.

9 **VII. CLASS ACTION ALLEGATIONS**

10 44. Plaintiff brings this action as a class action pursuant to FED. R. CIV. P. 23 on
11 behalf of himself and the members of the California Class as defined above.

12 45. The members of the California Class are so numerous that joinder of all members
13 is impracticable.

14 46. Plaintiff will fairly and adequately represent and protect the interests of the
15 California Class because there is no conflict between the claims of Plaintiff and those of the
16 California Class, and Plaintiff's claims are typical of the claims of the California Class.
17 Plaintiff's counsel are competent and experienced in litigating class actions and other complex
18 litigation matters, including wage and hour cases like this one.

19 47. There are questions of law and fact common to the proposed California Class,
20 which predominate over any questions affecting only individual Class members, including (a)
21 whether Plaintiff and Class Members are Defendants' employees rather than independent
22 contractors under California law; (b) whether Defendants illegally deny Plaintiff and Class
23 Members overtime compensation, meal breaks, and rest breaks; and (c) whether Defendants
24 make unlawful deductions from Plaintiff's and Class Members' pay.

25 48. Plaintiff's claims are typical of the claims of the California Class in the following
26 ways: 1) Plaintiff is a member of the California Class; 2) Plaintiff's claims arise out of the same
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1 policies, practices and course of conduct that form the basis of the claims of the California Class;
2 3) Plaintiff's claims are based on the same legal and remedial theories as those of the California
3 Class and involve similar factual circumstances; 4) there are no conflicts between the interests of
4 Plaintiff and members of the California Class; and 5) the injuries suffered by Plaintiff are similar
5 to the injuries suffered by members of the California Class.

6 49. Class certification is appropriate under FED. R. CIV. P. 23(b)(3) because questions
7 of law and fact common to the California Class predominate over any questions affecting only
8 individual Class members.

9 50. Class action treatment is superior to the alternatives for the fair and efficient
10 adjudication of the controversy alleged herein. Such treatment will permit a large number of
11 similarly situated persons to prosecute their common claims in a single forum simultaneously,
12 efficiently, and without the duplication of effort and expense that numerous individual actions
13 would entail. No difficulties are likely to be encountered in the management of this class action
14 that would preclude its maintenance as a class action, and no superior alternative exists for the
15 fair and efficient adjudication of this controversy. The California Class is readily identifiable
16 from Defendants' own employment records. Prosecution of separate actions by individual
17 members of the California Class would create the risk of inconsistent or varying adjudications
18 with respect to individual Class members that would establish incompatible standards of conduct
19 for Defendants.
20

21 51. A class action is superior to other available methods for adjudication of this
22 controversy because joinder of all members is impractical. Further, the amounts at stake for
23 many of the members of the California Class, while substantial, are not great enough to enable
24 them to maintain separate suits against Defendants.

25 52. Without a class action, Defendants will retain the benefit of their wrongdoing,
26 which will result in further damages to Plaintiff and the California Class.

27 53. Plaintiff envisions no difficulty in the management of this action as a class action.
28

FIRST CAUSE OF ACTION

FAIR LABOR STANDARDS ACT

Against All Defendants

54. All previous paragraphs are incorporated as though fully set forth herein.

55. The FLSA requires that covered employees be compensated overtime pay for all hours worked over forty (40) hours at no less than one and a half (1 ½) times their regular rate of pay. *See* 29 U.S.C. § 207.

56. The FLSA defines “employee” as “any individual employed by an employer,” 29 U.S.C. 203(e)(1), and “employer” as including “any person acting directly or indirectly in the interest of an employer in relation to an employee,” 29 U.S.C. 203(d). The FLSA’s definition of “employ” broadly covers anyone who is “suffer[ed] or permit[ed] to work.” 29 U.S.C. 203(g).

57. Defendants are subject to the wage requirements of the FLSA because Defendants are “employers” under 29 U.S.C. § 203(d).

58. At all relevant times, Plaintiff and the FLSA Class are covered employees entitled to the above-described FLSA’s protections. *See* 29 U.S.C. § 203(e).

59. At all relevant times, Defendants are “employers” engaged in interstate commerce and/or in the production of goods for commerce, within the meaning of the FLSA, 29 U.S.C. § 203.

60. Plaintiff and the FLSA Class are not exempt from the requirements of the FLSA.

61. Plaintiff and the FLSA Class are entitled to be paid overtime for hours worked over forty (40) in a workweek, pursuant to 29 U.S.C. § 207.

62. Defendants do not maintain accurate records of all hours that Plaintiff and the FLSA Class worked each workday and the total number of hours worked each workweek as required by the FLSA. *See* 29 C.F.R. § 516.2(a)(7).

63. Defendants, pursuant to their policies and practices, knowingly failed to pay Plaintiff and the FLSA Class overtime compensation for all hours worked over forty (40) in a workweek in violation of 29 U.S.C. § 207.

64. In violating the FLSA, Defendants acted willfully and with reckless disregard of clearly applicable FLSA provisions.

SECOND CAUSE OF ACTION

VIOLATION OF CAL. LAB. CODE § 2802

Against All Defendants

65. All previous paragraphs are incorporated as though fully set forth herein.

66. Defendants' conduct, as set forth above, in misclassifying Plaintiff and the California Class, as independent contractors, and failing to reimburse them for expenses they paid that should have been borne by their employer, constitutes a violation of Labor Code Section 2802.

THIRD CAUSE OF ACTION

VIOLATION OF CAL. BUS. & PROF. CODE §17200, *ET SEQ.*

Against All Defendants

67. All previous paragraphs are incorporated as though fully set forth herein.

68. Defendants' conduct, as set forth above, violates the Unfair Competition Law, Cal. Bus. & Prof. Code § 17200 *et seq.* ("UCL"). Defendants' conduct constitutes unlawful business acts or practices, in that Defendants have violated Labor Code Section 2802. As a result of Defendants' unlawful conduct, Plaintiff and California Class Members suffered injury in fact and lost money and property, including, but not limited to business expenses that Plaintiff and the California Class were required to pay.

69. Pursuant to California Business and Professions Code § 17203, Plaintiff and California Class Members seek declaratory and injunctive relief for Defendants' unlawful conduct and to recover restitution. Pursuant to California Code of Civil Procedure § 1021.5,

1 Plaintiff and California Class Members who worked for Defendants are entitled to recover
2 reasonable attorneys' fees, costs, and expenses incurred in bringing this action.

3 **FOURTH CAUSE OF ACTION**

4 **VIOLATION OF CAL. LAB. CODE § 226**

5 **Against All Defendants**

6 70. All previous paragraphs are incorporated as though fully set forth herein.

7 71. Pursuant to California law, Defendants were and/or are the employers of Plaintiff
8 and the California Class and purposefully misclassified them as independent contractors.

9 72. Cal. Lab. Code § 226 states that every employer shall, semimonthly or at the time
10 of each payment of wages, furnish each of his or her employees, either as a detachable part of the
11 check, draft, or voucher paying the employee's wages, or separately when wages are paid by
12 personal check or cash, an accurate itemized statement in writing showing (1) gross wages
13 earned, (2) total hours worked by the employee, except for any employee whose compensation is
14 solely based on a salary and who is exempt from payment of overtime under subdivision (a) of
15 Section 515 or any applicable order of the Industrial Welfare Commission, (3) the number of
16 piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis,
17 (4) all deductions, provided that all deductions made on written orders of the employee may be
18 aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for
19 which the employee is paid, (7) the name of the employee and only the last four digits of his or
20 her social security number or an employee identification number other than a social security
21 number, (8) the name and address of the legal entity that is the employer and, if the employer is a
22 farm labor contractor, as defined in subdivision (b) of Section 1682, the name and address of the
23 legal entity that secured the services of the employer, and (9) all applicable hourly rates in effect
24 during the pay period and the corresponding number of hours worked at each hourly rate by the
25 employee and, beginning July 1, 2013, if the employer is a temporary services employer as
26

1 defined in Section 201.3, the rate of pay and the total hours worked for each temporary services
2 assignment.

3 73. Defendants unlawfully failed to provide Plaintiff and the California Class with
4 accurate itemized wage statements in writing showing gross wages earned, total hours worked,
5 deductions, net wages earned, pay period, the name of the employee and the last four digits of his
6 or her social security number, the legal name of the employer, and all applicable hourly rates.

7 74. Plaintiff and the California Class “suffered injury” as defined in Cal. Lab. Code §
8 226 (as amended effective January 1, 2013) because they were not provided with a complete and
9 accurate wage statement. The injuries suffered by Plaintiff and the California Class were as a
10 result of Defendants’ knowing and intentional failure to comply with Cal. Lab. Code § 226(a).

11 75. Accordingly, Plaintiff and the California Class are entitled to recover fifty dollars
12 (\$50) for the initial pay period in which a violation of § 226 occurred, and one hundred dollars
13 for each violation of § 226 in a subsequent pay period, not to exceed a penalty of four thousand
14 dollars per member of the class.

15 **FIFTH CAUSE OF ACTION**

16 **FAILURE TO PAY OVERTIME WAGES PURSUANT TO CAL. LABOR CODE §§ 204,** 17 **510, AND 1194**

18 **Against All Defendants**

19 76. All previous paragraphs are incorporated as though fully set forth herein.

20 77. Labor Code § 510 entitles non-exempt employees to one and one-half times their
21 hourly pay for any and all hours worked in excess of eight hours in any work day, for the first
22 eight hours worked on the seventh consecutive day of work in a work week, and for any work in
23 excess of forty hours in any one work week. Plaintiff and the California Class regularly worked
24 in excess of eight hours per day and/or forty hours per week without overtime compensation.

25 78. By failing to pay overtime compensation to Plaintiff and the California Class,
26 Defendants violated and continues to violate Labor Code §§ 204, 510 and 1194. As a result of
27

1 Defendants' unlawful acts, Plaintiff and the California Class Members have been deprived of
2 overtime compensation in an amount to be determined at trial, and are entitled to recovery of
3 such amounts, plus interest thereon, attorneys' fees and costs, under Labor Code § 1194.

4 **SIXTH CAUSE OF ACTION**

5 **FAILURE TO PROVIDE MANDATED MEAL PERIODS PURSUANT TO LABOR**

6 **CODE§§ 226.7 AND 512**

7 **Against All Defendants**

8 79. All previous paragraphs are incorporated as though fully set forth herein.

9 80. Defendants failed to provide meal breaks as required by Labor Code§§ 226.7 and
10 512. Plaintiff and the California Class have worked in excess of five hours and at times ten hours
11 a day without being provided at least half hour meal periods in which they were relieved of their
12 duties, as required by Labor Code§§ 226.7 and 512. *See Brinker Restaurant Corp., et al. v.*
13 *Superior Court* (2012) 53 Cal. 4th 1004, 1040-41 ("The employer satisfies this obligation if it
14 relieves its employees of all duty, relinquishes control over their activities and permits them a
15 reasonable opportunity to take an uninterrupted 30-minute break, and does not impede or
16 discourage them from doing so ... [A] first meal period [is required] no later than the end of an
17 employee's fifth hour of work, and a second meal period [is required] no later than the end of an
18 employee's 10th hour of work.").

19
20 81. Because Defendants failed to provide proper meal periods, they are liable to
21 Plaintiff and the California Class for one hour of additional pay at the regular rate of
22 compensation for each work day that the proper meal periods were not provided, pursuant to
23 Labor Code§§ 226.7 and 512, as well as interest thereon, plus reasonable attorneys' fees and
24 costs of suit pursuant to Civil Procedure Code§ 1021.5.

25 **JURY DEMAND**

26 Plaintiff requests a trial by jury on all claims.

27 **PRAYER FOR RELIEF**

Wherefore, Plaintiff seeks the following relief on behalf of himself and all others similarly situated:

- A. An order permitting this litigation to proceed as a collective action pursuant to 29 U.S.C. § 216(b);
- B. An order authorizing prompt notice, pursuant to 29 U.S.C. § 216(b), of this litigation to be sent to all potential FLSA Class members;
- C. An order permitting this litigation to proceed as a class action pursuant to FED. R. CIV. P. 23 on behalf of the California Class;
- D. Back pay damages (including unpaid overtime compensation, unpaid spread of hours payments, and unpaid wages) and prejudgment interest to the fullest extent permitted under the law;
- E. Compensatory, consequential, general, special, and liquidated damages to the fullest extent permitted under the law;
- F. Civil penalties to the fullest extent permitted under the law;
- G. Injunctive relief to the fullest extent permitted under the law;
- H. Litigation costs, expenses, and attorneys' fees to the fullest extent permitted under the law; and
- I. Such other and further relief as this Court deems just and proper.

Dated: January 26, 2016

Respectfully submitted,

CHARLES MCKNIGHT, individually and on behalf of all others similarly situated,

By their attorneys,

/s/ Robert Starr

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**Pro Hac Vice* application to be filed.

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